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Internal Revenue Service

Significant Index No. 72.20-04

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:

T:EP:RA:T:A2

Date:

OCT 25 2001

In re:

Taxpayer N =

This letter is in response to your request, dated June 18, 2001, in which you asked for a ruling as to whether certain proposed distributions from an individual retirement account (IRA A) owned by you are part of a series of substantially equal periodic payments and are, therefore, not subject to the 10 percent additional tax imposed on premature distributions under section 72(t) of the Internal Revenue Code (Code). The ruling request was amended by you in a telephone call with of our office on October 2, 2001, to clarify the requested ruling and modify the methodology used to calculate distributions.

According to the facts as stated, you will attain age 55 in 2001 and are the owner of an individual retirement account (IRA A). Taxpayer N is your spouse, and Taxpayer N will attain age 58 in 2001. You would like to start receiving distributions from IRA A in June 2001, and would like to avoid the additional tax imposed on early distributions by taking distributions in a form that satisfies the section 72(t)(2)(A)(iv) exception for substantially equal periodic payments. You would like to calculate a monthly distribution amount by amortizing the account balance of IRA A as of April 30, 2001, over a number of years (term certain) equal to the joint life and last survivor life expectancy for yourself and Taxpayer N (obtained from Table VI of section 1.72-9 of the Income Tax Regulations using the ages attained in 2001 by you and Taxpayer N) multiplied by 12, at an interest rate of 5.8 percent, compounded monthly. Once calculated, the same monthly distribution amount will be distributed each month thereafter. All distributions will be taken from IRA A and only from IRA A.

Ruling Requested

Based on these facts, you have requested the following ruling.

The proposed method of determining periodic payments satisfies one of the methods described in Notice 89-25 and results in substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) of the Code, and such payments will not be subject to the additional tax of section 72(t)(1) unless the requirements of section 72(t)(4) are not met.

Applicable Law

Section 408(d) of the Internal Revenue Code provides that amounts paid or distributed out of an individual retirement plan must be included in gross income by the payee or distributee in the manner provided under section 72 of the Code.

Section 72 of the Internal Revenue Code provides rules for determining how amounts received as annuities, endowments, or life insurance contracts and distributions from qualified plans are to be taxed.

Section 72(t) of the Internal Revenue Code was added to the Code by the Tax Reform Act of 1986 (TRA '86), effective generally for taxable years beginning after December 31, 1986. Section 72(t)(1) provides for the imposition of an additional 10 percent tax on early distributions from qualified plans, including IRAs. The additional tax is imposed on that portion of the distribution that is includible in gross income.

Section 72(t)(2)(A)(iv) of the Code provides that section 72(t)(1) shall not apply to distributions which are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of such employee and his beneficiary.

Section 72(t)(4) of the Code imposes the additional limitation on distributions excepted from the 10 percent tax by section 72(t)(2)(A)(iv) that, if the series of payments is subsequently modified (other than by reason of death or disability) before the later of (1) the close of the 5-year period beginning with the date of the first payment and (2) the employee's attainment of age 59 1/2, then the taxpayer's tax for the first taxable year in which such modification occurs shall be increased by an amount determined under regulations, equal to the tax that would have been imposed except for the section 72(t)(2)(A)(iv) exception, plus interest for the deferral period.

Section 1.72-9 of the Income Tax Regulations (Regulations) provides tables that are to be used in connection with computations under section 72 and the regulations thereunder. Included in this section are tables giving life expectancies for one life (Table V) and joint life and last survivor expectancies for two lives (Table VI).

Notice 89-25, 1989-1 C.B. 662, provides guidance in the form of questions and answers on certain provisions of the Tax Reform Act of 1986 (TRA '86). In the absence of regulations on section 72(t) of the Code, this notice provides guidance with respect to the exception to the tax on premature distributions provided under section 72(t)(2)(A)(iv). Q&A-12 of Notice 89-25 provides three methods for determining substantially equal periodic payments for purposes of section

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72(t)(2)(A)(iv) of the Code. Two of these methods involve the use of an interest rate assumption that must be an interest rate that does not exceed a reasonable interest rate on the date payments commence.

Proposed Methodology

The proposed method for determining monthly periodic payments described in the ruling request, as modified, is to calculate an end-of-period monthly distribution amount by amortizing the account balance of IRA A as of April 30, 2001, over a term certain equal to 12 times the joint and last survivor life expectancy for you and Taxpayer N (obtained from Table VI of section 1.72-9 of the regulations, using the ages attained in 2001 by you and Taxpayer N), using an interest rate of 5.8 percent (approximately 110 percent of the monthly applicable federal long-term rate, in effect for May 2001 and used for purposes of Code section 1274(d)) divided by twelve. Once the monthly distribution amount is calculated, the same amount will be distributed each month thereafter. The distributions for June, July, August, September, and October 2001 will be distributed following receipt of this ruling. All distributions will be taken from IRA A, and only from IRA A.

Conclusion

The life expectancy and interest rate used are such that they do not result in the circumvention of the requirements of sections 72(t)(2)(A)(iv) and 72(t)(4) of the Code (through the use of an unreasonable life expectancy or an unreasonably high interest rate).

Accordingly, we conclude that the proposed method (as modified) of determining periodic payments satisfies one of the methods described in Notice 89-25 and results in substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) of the Code, and such payments will not be subject to the additional tax of section 72(t) unless the requirements of section 72(t)(4) are not met.

This ruling is directed only to the individual that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Sincerely yours,

Martin L. Pippins

Martin L. Pippins, Manager
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